

RECEIVED  
U.S. E.P.A.

2007 JUN 21 AM 11:34

ENVIR. APPEALS BOARD

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY -  
ENVIRONMENTAL APPEALS BOARD

	)	
	)	Appeal Nos. NPDES 07-08 & 07-09
In re Teck Cominco Alaska Incorporated Red Dog Mine	)	NANA REGIONAL CORPORATION,
	)	INC.'S MOTION FOR LEAVE TO
NPDES Permit AK-003865-2	)	INTERVENE
	)	
	)	
	)	

NANA Regional Corporation, Inc. ("NANA") moves for leave to intervene in two consolidated appeals seeking review of EPA Region 10's NPDES permit for the Red Dog Mine, Permit No. AK-0003865-2 ("the Permit"). On April 9, 2007 the City of Kivalina, the Kivalina IRA Council, several individuals and three environmental groups (collectively "Kivalina") filed a petition for review. On April 11 the permittee, Teck Cominco, filed its petition for review. By Order dated May 23 the Board consolidated the two dockets and granted Region 10's request to file its response to both appeals by July 30, 2007.<sup>1</sup>

NANA seeks leave to address whether Kivalina has satisfied the conditions for Board review of a permit under 40 CFR 124.19(a). Should the Board grant Kivalina's petition,

<sup>1</sup> Order Granting Administrative Consolidation, Granting Authority To Respond To Petitions, And Extending Time For Filing Responses (May 23, 2007).

1 NANA seeks to show that Kivalina's assignments of error lack merit. To prevent any delay in  
2 the proceedings NANA is prepared to file its response to Kivalina's petition by the July 30  
3 deadline the Board established for EPA's response. NANA is authorized to advise the Board  
4 that neither Region 10 nor Teck Cominco opposes NANA's intervention.

5  
6 **I. NANA'S INTEREST IN THESE PROCEEDINGS**

7 NANA is a Regional Native Corporation formed pursuant to the Alaska Native Claims  
8 Settlement Act, 43 U.S.C. § 1601 *et. seq.*, and the laws of the State of Alaska to "promote the  
9 economic, social and personal well-being of the Natives of the northwest region of Alaska."<sup>2</sup>  
10 NANA owns the land and the resources underlying the Red Dog Mine (the "Mine"), and  
11 leases the Red Dog property to Teck Cominco pursuant to a long term Operating Agreement.<sup>3</sup>  
12 NANA's interests in the Mine are significant and diverse. First, Teck Cominco pays royalties  
13 to NANA. The viability and profitability of the Mine affects these royalties.<sup>4</sup> Second, the  
14 Mine is the only major source of non-governmental jobs in the NANA region; as such, it is the  
15 centerpiece of NANA's effort to provide meaningful jobs to its native shareholders.<sup>5</sup> On  
16 average, 60 percent of the Mine's workforce consists of NANA shareholders or their spouses.<sup>6</sup>  
17 Third, NANA subsidiaries provide services to Teck Cominco. NANA Management Services,  
18 LLC provides food service, housekeeping and maintenance. NANA/VECO performs  
19 construction projects. NANA Dyantec Drilling LLC has done most of the exploratory drilling  
20 for the Mine. NANA/Lynden Logistics, LLC transports supplies to the mine and hauls zinc  
21 and lead concentrates from the Mine to a marine terminal on the Chukchi Sea.<sup>7</sup>

22  
23 <sup>2</sup> See Declaration of Walter G. Sampson (Sampson Declaration) ¶ 2.

24 <sup>3</sup> *Id.* ¶ 3.

25 <sup>4</sup> *Id.* ¶ 4.

26 <sup>5</sup> *Id.*

27 <sup>6</sup> *Id.*

28 <sup>7</sup> *Id.*

1 profound. Civil penalties paid by Teck for future violations of the TDS limits in the  
2 superseded NPDES permit would reduce the profitability of the Mine.<sup>16</sup> If the Board  
3 overturned the 2007 permit's TDS limits the economic impact on NANA would turn upon the  
4 cost of treating an annual average discharge volume of 1.45 billion gallons to achieve a TDS  
5 effluent limit that never has been achieved, to NANA's knowledge, anywhere in the world.<sup>17</sup>  
6 While NANA cannot project the cost or feasibility of meeting this limit, it is safe to say that  
7 Kivalina's appeal threatens the economic vitality of the Red Dog Mine, together with the  
8 royalties, jobs and service contracts held by NANA shareholders.

9  
10 **B. NANA's Motion to Intervene is Timely.**

11 NANA's motion to intervene is timely and will not cause a delay in these proceedings.  
12 The factors relevant in determining timeliness are (1) the stage of the proceeding, (2) the  
13 prejudice to the other parties and (3) the reason for any delay. *United States v. Carpenter*, 298  
14 F.3d 1122, 1125 (9<sup>th</sup> Cir. 2002). Kivalina and Teck Cominco filed their petitions for review in  
15 April. The Board recently granted Region 10's request for an extension of time to respond to  
16 the pending petitions.<sup>18</sup> NANA is prepared to file its response by the same July 30 date the  
17 Board established for EPA's response. NANA's participation will not prejudice the interests  
18 of any party.

19 **C. Existing Parties Do Not Adequately Represent NANA's Interests.**

20 The burden of showing that existing parties may not adequately represent an  
21 intervenor's interests is a "minimal" one.<sup>19</sup> NANA's interests plainly diverge from those of  
22 Region 10. For instance, Region 10 concluded that the reissuance of the Red Dog permit  
23 required NEPA review. Kivalina challenges the adequacy of Region 10's NEPA compliance,  
24

25 <sup>16</sup> Sampson Declaration ¶ 8 (quoting NANA's articles of incorporation).

26 <sup>17</sup> *Id.*

27 <sup>18</sup> See the Board's May 23 Order cited in footnote 1, *supra*.

28 <sup>19</sup> *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972).

1 but NANA questions whether the reissuance of the Red Dog permit was subject to NEPA  
2 review at all. NANA may defend Kivalina's appeal on grounds that differ substantially from  
3 Region 10's positions.


4 Nor can Teck Cominco represent NANA's interests. While NANA and Teck Cominco  
5 share an interest in defeating Kivalina's appeal, NANA's status as an Alaska Native  
6 Corporation, NANA's responsibility to its shareholders to protect the Region's subsistence  
7 resources in perpetuity and NANA's reversionary interest in the land underlying the Mine  
8 distinguish NANA's interests from those of Teck Cominco. More fundamentally, the Mine is  
9 the only substantial economic asset in NANA's region, whereas Red Dog is but one of many  
10 production facilities in Teck Cominco's portfolio. For these reasons the Board cannot fairly  
11 rely on Teck Cominco to protect NANA's interests.

12  
13 **III. CONCLUSION**

14 The Board should grant NANA's motion to intervene, conditioned upon NANA filing  
15 any response to Kivalina's petition for review by the deadline established for EPA's response.  
16

17 Respectfully submitted this 20th day of June, 2007.  
18

19 HELLER EHRMAN LLP

20  
21 By   
22 \_\_\_\_\_  
23 MATTHEW COHEN  
JUSTO GONZALEZ

24  
25 Attorneys for  
NANA REGIONAL CORPORATION, INC.  
26

27 SE 2210485 v3  
6/20/07 10:45 AM (38576.0002)  
28